Supreme Court, U. S.
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SUPREME COURT
OF THE UNITED STATES

No. 79-1714

October Term 1979

JIMMIE ALEXANDER,

Petitioner and Appellant,

vs.

LOS ANGELES COUNTY CIVIL SERVICE COMMISSION, ET AL.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL STATE OF CALIFORNIA SECOND APPELLATE DISTRICT.

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SUPREME COURT
STATE OF CALIFORNIA

JIMMIE ALEXANDER,
Petitioner and Appellant,

vs.

LOS ANGELES COUNTY CIVIL SERVICE COMMISSION, et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI

INTRODUCTION

The Supreme Court, State of California, has declined to hear the appeal presented by this appellant, and therefore appellant is petitioning the Supreme Court to declare Section 33 of the Administrative Code of the County of Los Angeles unconstitutional because said code allows the personnel officer and the Civil Service Commission the right to terminate an employee without cause or a hearing. Not all persons so terminated are in a position to appeal to the higher court for relief. It is difficult to believe that the Supreme Court, State of California, would sanction such and illegal action.

The County Assessor has fifteen regional offices, each of which has a staff of supervisor, appraiser and clerks. The Personnel Officer works out of the main office in downtown Los Angeles and most of the Assessor's office personnel do not know or have any contact with him. The regional supervising clerk takes care of the paper work at the regional office as it concerns sick leave, vacation, etc.

The major part of the work of appellant herein as a real estate appraiser is field work. Therefore, appellant was not required to punch a time clock or call in, but each day went directly to his field assignment.

Up to August 1973, appellant had used approximately three days of sick time. In August 1973 appellant was a victim of violent crime wherein he was wounded by gunfire. Said wound and the complications therefrom caused him to be off work for an extended period of time, subsequent to which he underwent additional surgery and suffered a heart attack. A check of appellant's personnel records will confirm that from the time he became an employee of Los Angeles County in 1960 until August 1973, he had used only approximately three days of sick leave, so he was obviously a steady and reliable employee.

Appellant contends that the Assessor's Personnel Officer, Alfred Muir, has in the past shown bias against blacks. For example, in 1964 he tried to prevent appellant from transferring to another department by requiring him to take a physical examination. Such an examination is required when an employee is transferring if the standards are higher. Appellant was doing the work of a security

officer; therefore, the standard were higher than required by appellant's job as real estate appraiser.

The Los Angeles County Civil Service Commission is a rubber stamp for Administration. There is no one on the Commission to protect the interests and rights of minorities. Therefore, we must look to the courts to safeguard the interests of county employees. The chief administrative officer and the director of personnel is the same person in Los Angeles County.

I had telephone conversations on several occasions with Regional Supervising Clerk and my immediate supervisor during the month of July and August 1977. I received a get well card from the Regional Office dated July 30, 1977. I received payroll checks issued August 10, 1977 and a check issued August 25, 1977.

The County Personnel Director in his effort to compel me to retire stated the following:

> "Contingent upon and as soon as Mr. Alexander files all necessary papers to initiate a disability retirement, the department will:
>
> 1. Reinstate Mr. Alexander for the purpose of drawing all benefits to which he would have been entitled had he not been separated from service.
> 2. The reinstatement is understood not to be for the purpose of Mr. Alexander eventually returning to active service in the department.
> 3. The department will provide Mr. Alexander with the following benefits.

- 7 days of accurued sick leave at 100% for the period 7/5/77 through 7/13/77.
- 56 days of accrued sick leave at 75% for the period 7/14/77 through 9/7/77.
- 91 days of accrued sick leave at 50% for the period 9/18/77 through 12/7/77.
- 20 days of accrued vacation for the period 12/8/77 through 12/31/77. *(16 days used, 4 days carried over.)*

*This statement is not true.

"Benefits beginning with the Calendar year 1978 are as follows:

- 12 days of accrued sick leave at 100% for the period 1/1/78 through 1/18/78.
- 56 days of accrued sick leave at 75% for the period 1/19/78 through 3/15/78.
- 91 days of accrued sick leave at 50% for the period 3/16/78 through 5/14/78.
- 20 days regular accrued vacation and 4 days deferred vacation from 1977 for the period 6/15/78 through 7/19/78.

Mr. Alexander will be entitled to restoration of his health insurance benefits retroactively to his date of separation."

Note: I had forty (40) days of vacation December 31, 1977.

ISSUES ON APPEAL

1. Whether Section 33 of Ordinance No. 9801, pursuant to which appellant was terminated, is constitutional.

2. Whether the Superior Court erred in not finding an abuse of discretion in the act of the Civil Service Commission, which denied the request of appellant herein, a 17-year Civil Service employee, for a hearing based on the decision of the Los Angeles County Director of Personnel that appellant's absences from his position as a real estate appraiser from July 5, 1977, to September 6, 1977, were not for medical reasons beyond his control.

3. Whether the failure of the Director of Personnel to give appellant notice of the charges and allow him a hearing before dismissing him constituted a denial of procedural due process and resulted in an invalid discharge.

4. Whether the administrative decision affecting the appellant's legitimately acquired or vested right of employment after 17 years of service was too important to the individual in human terms and to the individual's life to relegate it to exclusive administrative extinction without according that individual a hearing or a full independent judicial review.

5. Whether the appellant's case was within the intended class of the **Baker v. Wadsworth** doctrine.

6. The County Assessor personnel officer is also guilty of discrimination under Title VII of the E.E.O.C.

7. The Superior Court and the Appellate department is using the County Council brief as substantial evidence and failing to exercise its independent judicial review

power of the County Assessor personnel officer and the Civil Service Commission.

8. Section 33 of the Administrative Code is unconstitutional on its face or as applied to me, denied me due process. The Court should declare this code unconstitutional.

9. The Trial Court erred in finding the Civil Service Commission did not abuse its discretion when they denied me a hearing.

10. Section 33 of the Administrative Code deprives an employee a reasonable opportunity to be heard as guaranteed due process clause of the Fifth and Fourteenth Amendment. An employees right to a hearing is fundamental, it derives from constitutional guarantee that may not be taken without due process.

11. I am contending my termination was due to fraud, undue influence and discrimination by a racist.

12. The personnel officer and the Civil Service Commission violated the Eighth Amendment Cruel and Unusual Punishment Imposed.

13. When statutes delegate power with inadequate protection against unfairness or favoritism, and when such protection can easily be provided the reviewing court may well insist upon such protection or invalidate the Administrative Code or legislation.

14. If a law is passed that has reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory the requirement of due process are satisfied and the judicial determination to the effect renders a court

functus officeo. (291 U.S. at p. 537 [78 L. Ed. at p. 957]).

15. Section (33) thirty three of the Administrative Code does not meet the above requirement, therefore section thirty three of the administrative code is unconstitutional.

16. The trial court erred in the finding the Civil Service Commission did not have to grant me a hearing because I had resigned. This is not supported by any written document or substantial evidence.

17. The Civil Service Commission decision not to grant me a hearing and condone the illegal action of a racist terminating a Civil Service employee with seventeen years of service amount to Cruel and Unusual Punishment.

18. In determining the validity of a code or legislative measure, the court's sole concern is whether the measure reasonably relates to a legitimate government purpose, which is not to be confused with the wisdom of the measure.

STATEMENT OF FACTS

JIMMIE ALEXANDER, appellant herein, was a permanent employee of the County of Los Angeles for seventeen (17) years. On August 10, 1973, he received gunshot wounds to his intestines, liver and other portions of the abdomen. Said injuries caused liver and kidney failures, severe strain on the cardi-vascular system and paralysis of the left vocal cord. His medical records were subpoenaed at the time of trial and made a part of the Superior Court record of this case.

On or about July 5, 1-77, the appellant, pursuant to the Assessor's Department Handbook No. 5207-1-3, Paragraph 2.1, p.1, effective February 13, 1974, notified the Supervising Control Clerk of Regional Office #9 by telephone that he was unable to return to work because of stomach illness. Alfred F. Muir, the Personnel Officer, on July 15, 1977, sent to appellant a Physician's Certificate, requesting appellant to get it completed as soon as possible and return it to Director, Occupational Health Service, One Bunker Hill Building, 601 West Fifth Street, Fifth Floor, Los Angeles, California.

The Assessor's Department Handbook No. 5207-1-3 states:

"GENERAL FIELD APPRAISER INSTRUCTIONS"

The following instructions are designed to guide the appraiser working in the field. To the degree that personnel regulations are complex and frequently changed, it may be necessary to consult your supervisor and/or refer to the office of Administrative Memoranda issued by Administrative Services.

1. WORKING HOURS

Working Day	1.1	Working hours are from 8:00 a.m. to 4:30 p.m. Monday through Friday except when assigned to counter duty in the main office, in which case working hours are from 8:00 a.m. to 5:00 p.m.

2. ABSENCE DUE TO ILLNESS

Reporting sick	2.1	If you cannot report to work because of illness notify your regional office time clerk before 8:30 that morning.
Reporting return to work	2.2	When you return to work after an illness notify your regional office time clerk before 8:30 that morning.
Do not use for industrial accidents	2.3	Do **not** have the time clerk report you as "sick" if your absence is due to an industrial accident. (See paragraph 11).
Do not use for personal business	2.4	Sick leave may not be used for personal business, family illness, family doctor appointments or for any reason other than your own illness. Only the three days of paid personal leave may be used for these purposes. See paragraph 3.

3. PAID PERSONAL LEAVE

Three days per year	3.1	Three of the total 12 sick days per calendar year may be used as paid leave for personal reasons, such as personal emergencies or religious holidays. Not more than three days in any calendar year may be used for this purpose. Any unused portion of these three days is carried forwar as sick leave.

Not having received the Physician's Certificate, the Personnel Officer mailed to appellant a certified letter on August 17, 1977, requesting medical verification of illness by August 23, 1977, and stating that if such statement was not so received, appellant would be considered as absent without pay. That letter was never received by the petitioner and was returned to the sender unacknowledged. Medical re-evaluation and release to return to work by the Occupational Health Service was a condition precedent to the return of appellant to his job.

Appellant did receive the Personnel Officer's letter of August 25, 1977, via certified mail, advising him that from August 24, 1977, he would be carried on payroll as absent without pay and sick leave would not be applied until receipt of medical verification of illness, citing Section 78.07 of the Administrative Code.

Appellant notified his physician, Barbara Reve, M.D., of said request, obtained the required Physician's Certificate from her and personally mailed it by certified mail to the Occupational Health Service. Receipt of said Physician's Certificate was acknowledged by the Los Angeles County Department of Personnel Occupational Health Service on September 6, 1977.

On September 6, 1977, without checking with the Department of Personnel Occupational Health Service for verificiation of the receipt of the Physician's Certificate, the Personnel Officer terminated appellant's employment under Section 33 of the Administrative Code of the County of Los Angeles on the belief that the medical verifictaion of absence had not been received.

Appellant requested a full Civil Service hearing on said termination of employment, but it was denied by the Civil Service Commission on June 21, 1978.

ARGUMENT

A. Procedural Due Process Hearing

At a minimum, a permanent public employee is entitled under due process to a notice of any proposed adverse action and to a hearing before an impartial official, and has the right to appear personally, to confront and examine adverse witnesses, to present favorable evidence and to be represented by counsel (**U.S.C.A. Const. Amend. 14**). Hearing before an impartial official to which such employee is entitled to discharge is a "hearing required by law" for purposes of the administrative mandamus section pertaining to inquires into the validity of any final administrative order or decision made as a result of proceeding in which those requirements are based on both the state and federal Constitutions within the meaning of subdivision (a) of Section 1094. 5 (**Los Angeles City Emp. Ass'n v. County Sanitation** (March 2, 1979), 152 Cal Rptr. 415, 418; **William v. County of Los Angeles** (Nov. 1978), 150 Cal Rptr. 475; **Skelly v. State Personnel Board** (1975), 15 Cal. 3d 194, 124 Cal. Rptr. 14.

In the instant case, appellant's termination of employement was predicated on the supposed lack of timely receipt of a Physician's Certificate. On September 6, 1977, upon the mistaken belief that no such certificate had been filed, the Personnel Officer terminated appellant's employment without requesting verification from the Occupational Health Service of receipt of the Physician's Certificate, and without setting a hearing for the appellant to respond and establish his compliance with the Agency's request and Section 78.07 of the Adminstrative Code.

The appropriate procedure in such cases is dictated by Los Angeles County Ordinance No. 4099, Section 78.07 (9740, March 14, 1969), **Medical Re-evaluation,** which states:

> "Any employee upon return from extended sick leave, or at such time that the Department Head believes that the employee may not be physically able to perform the duties of his position may be referred by the appointing officer to the Director of Personnel for a medical re-evaluation consisting of a medical examination and/or review of the medical records as appropriate. The Director of Personnel shall report his findings and recommendations to the appointing officer. If the Director of Personnel determines that return to normal duties by the employees involved would be potentially harmful to himself or others, the appointing officer shall be so notified and shall take whatever measures may be deemed necessary to prevent the employee from being placed in such a work situation and if appropriate, to seek rehabilitation, retraining and reassignment of the employee.

> The appointing officer **shall** notify the Director of Personnel when any employee under his jurisdiction has taken thirty (30) days of sick leave within any 12-month period and shall refer such employee for medical re-evaluation.
>
> Whenever necessary, the Director of Personnel **shall** establish follow-up examination to evaluate an employee's medical adjustment.

In **Frates v. Burnett,** 9 Cal. App. 3d 63; 87 Cal. Rptr. 731, the court held that "the failure to give the employee notice of charges and a hearing before dismissing him constituted a denial of procedural due process and was prejudicial in that the board put itself in the position of being the employee's prosecutor and then at a later date his judge."

In the instant case, the failure of the Director of Personnel to verify the receipt of the Physcian's Certificate on September 6, 1977, by the Department of Personnel Occupational Health Service, together with the immediate termination of the appellant on the same day without medical re-evaluation nor an opportunity for a hearing to establish appellant's compliance with the Agency's request and Section 78.07 of the Administrative Code, placed the Department of Real Property Appraisel in the position of being appellant's prosecutor, and at the same time his judge.

The said act of the Agency was a prejudicial denial of procedural due process and constituted an invalid discharge.

B. Vested Rights of Employment

> "California statutory scheme regulating Civil Service employment confers on an individual who achieves the status of permanent employee a property interest in the continuation of his employment which is protected by due process."
>
> **Skelly vs. State Personnel Bd.** (1975), 124 Cal. Rptr. 14, 539 P. 2d 774, 15 C. 3d 194; Cal. Gov't. Code Section 19500 Article I, Par. 3 of the 1978 Pocket part, Vol. 33A.
>
> Government Code Section 18528 provides:
>
> Permanent employee means an employee who has permanent status. "Permanent status" means the status of an employee who is lawfully retained in his position after the completion of the probationary period provided in this part and by board rule.

The "probationary period" is the initial period of employment and generally lasts for six (6) months unless the Board establishes a longer period, not exceeding one (1) year. (Government Code Section 19170).

The appellant at the time of termination of employment was a seventeen-year Civil Service employee. It cannot be doubted that appellant's right to continue in his permanent public employment was a "vested right" within the meaning of the Government Code and the **Skelly** doctrine.

Ordinance No. 9801 provides as follows:

Section 33. RESIGNATION: HOW EFFECTED A county officer or employee resigns in any of the following ways:

(a) A county officer or employee who without authorization is absent or fails to discharge his regularly assigned duties for either three (3) consecutive regular working days or for two (2) consecutive regularly scheduled on-duty shifts, whichever may be applicable, shall be deemed to have resigned effective as of the end of the day of which he last performed any of the duties of his position; provided, however, an officer or employee shall not be deemed to have so resigned if he resumes the performance of his regularly assigned duties at the commencement of his next regular working day or on-duty shift following the expiration of the aforementioned period of absence or failure to discharge duties.

Within twenty (20) calendar days after the effective date of such resignation, any officer or employee who has resigned pursuant to this subsection(s) may file with his appointing officer a written request for reinstatement. The appointing officer may reinstate such officer or employee if such appointing officer finds that there is good cause for the absence or failure to perform duties such as bona fide illness, injury, or similar circumstances beyond the control of the officer or employee, and that such officer or employee is ready and able to resume the discharge of his duties. In the event an individual is so reinstated, such reinstatement shall constitute a retroactive leave of absence.

. . . .

> Section 33.1 RESIGNATION: NOTICE. When a county officer or employee, without prior authorization, is absent or fails to discharge his regularly assigned duties for such period of time that it appears likely he intends to resign pursuant to subsection (a) of Section 33, the appointing officer of such affected officer or employee shall serve upon that officer or employee, either personally, by telegraph, or by first class mail addressed to the most recent address furnished to the appointing officer by the affected officer or employee, a notice in writing stating that failure of the officer or employee to resume the discharge of his duties on or before the commencement of the working day stated therein shall constitute such resignation. Said notice shall be posted, delivered personally, or delivered to the telegraph office at least twenty-four (24) hours prior to the commencement of the working day specified in the notice. Failure to give such written notice shall not cause such resignation to be ineffective.

The said ordinance established the policy of "implied resignation."

The application of this doctrine was asserted in the landmark case of **Burval R. Baker v. Guy W. Wadsworth,** 6 Cal. App. 3d 253; 85 Cal. Rptr. 880. In that case, the trial court denied a writ of mandamus to three (3) city employees who sought to compel the city to set aside a notice of termination fo their employment and to reinstate

them to full seniority. The labor union to which they belonged became involved in a dispute with private contractors and established a picket line around the plant where they worked. Many plant employees, including the complaining employees, refused to defy the picket line and did not report for work. Under a rule of the City Civil Service Commission, an employee who was absent for seven (7) consecutive days without excuse was deemed to have abandoned his position and to have resigned from the service. Before the seven (7) days elapsed, a separate gate which was not picketed was opened by arrangement with the union. The complaining employees entered through this gate but refused to report for work. They were **duly notified of their termination,** and a hearing **held before the City Civil Service Commission** at their request resulted in a finding that their absences were not excusable. The Court of Appeals affirmed the judgment. It must be noted that "**no request for leaves of absence,** either with or without pay, were approved for any employee who did not report for duty . . . (except for persons who reported absences for reasons of illness or previously approved requests for leaves of absence." (**Baker v. Wadsworth, supra,** p. 259.)

The application of the doctrine of implied resignation should be to (1) large classes of employees belonging to labor or employee organizations affecting stable operation of county services with demonstrations and work stoppages, (2) those who refuse to work after being given the opportunity to have a hearing before the Civil Service

Commission or administrative board, and (4) neither the Baker doctrine of implied resignation nor the city ordinance applies to persons who report absences for reasons of illness.

It appears that Section 33 of Ordinance No. 9801 was not intended to apply to employees with reported and verified illness and therefore is not applicable to the instant case.

C. Abuse of Discretion

The Baker doctrine does not abrogate the fundamental due process requirements of a fair and impartial hearing with reasonable notice and reasonable opportunity to be heard.

Upon the request of appellant for a hearing, the Civil Service Commission of the county had nothing to lose by allowing appellant to justify his absences from employment. His period of absence was already established as a matter of record at the Occupational Health Service pursuant to the Physician's Certificate on file with that office.

The ratification by the Civil Service Commission of the act of the Personnel Officer, Alfred Muir, who failed to comply with Los Angeles County Ordinance No. 4099, Section 78.07, and did not consider the Physician's Certificate or mediaclly re-evaluate appellant, resulted in an invalid dischare of appellant from his position. (**Baumgardener v. City of Hawthorne** (1951), 104 Cal. App. 2d 512, 517; 231 P. 2d 864.)

The application of Section 33 of Ordinance 9801 by the Agency was an act in excess of its powers and void.

(**Ferdig v. State Personnel Board** (1969), 71 Cal. 2d 96, 103; 77 Cal. Rptr. 224). The ratification of that act without procedural safeguards of the vested right of appellant to continue his employment after seventeen years of service was an abuse of discretion.

D. Trial Court Error

Because of the provisions of Cal. Const. Art. VI, Sec. I, that judicial power of the state is vested in the Supreme Court, Courts of Appeal, superior courts, municipal courts, and justice courts, the Legislature is not authorized to grant judicial powers to local administrative agencies, and power granted to those agencies under the former references to the provisions to "inferior courts" no longer exists. Thus, if an order or decision of an agency substantially affects a fundamental vested right, the trial court in determining, under Code of Civil Procedure Section 1094.5, whether there has been an abuse of discretion because the findings are not supported by the evidence, must exercise its independent judgment on the evidence and find an abuse of discretion if the findings are not supported by the weight of the evidence, but if the order or decision does not substantially affect a fundamentally vested right, the court's inquiry will be limited to a determination of whether or not the findings are supported by substantial evidence in light of the whole record.

Coreen Strumsky vs. San Diego County Em-

ployees Retirement Assoc. (1974), 11 Cal. 3d 28, 29; 112 Cal. Rptr. 805); **Los Angeles County Employees Assoc. Local No. 660 v. County Sanitation District No. 2 of Los Angeles** (1979), 152 Cal. Rptr. 415, 418-419.

In **Strumsky** the court further stated, citing **Bixby v. Pickno,** 4 Cal. 3d 130, 144-147, that,

> . . . when an administrative decision affects a right which has been legitimately acquired or is otherwise "vested," and when that right is of a fundamental nature from the standpoint of its economic aspect or its "effect . . . in human terms and the importance . . . to the individual in the life situation," then a full and independent judicial review of that decision is indicated because "the abrogation of the right is too important to the individual to relegate it to exclusive administrative extinction."
>
> At page 34.

Appellant's seventeen years of service and right to pension, retirement, medical and other benefits are not in dispute and cannot be doubted as having vested.

In light of the fundamentally vested right of the appellant, and the records showing the timely filing of the Physician's Certificate and appellant's compliance with the requests of the Agency, and denial of appellant's requested procedure notice and hearing, it was imperative for the trial court to find an abuse of discretion. The application of the **Baker** case to the case at bar was an error in law and judgment.

The Court erred in asking Petitioner and Appellant's attorney to submit because of the caseload of the court. The reason I say you erred in asking the Appellant's attorney to submit is because medical records were filed or sent to the Court in September 1978. The Court did not notify Appellant's attorney that this additional evidence was not going to be accepted until December 4, 1979, the same date the Court rendered its opinion. In other words, if Appellant's attorney had known that the Court was not going to accept the medical records as evidence, he would not have agreed to submit. We consider this a violation of due process.

CONCLUSION

Appellant respectfully requests this Court to declare Section 33 of the Administrative Code of the County of Los Angeles unconstitutional for the reason that said section allows the county personnel officer and the Civil Service Commission to arbitrarily terminate an employee without sufficient cause and without a hearing; and to issue a peremptory Writ of Mandate requiring respondents herein to reinstate appellant to his former job classification, together with restoration of all wages and benefits lost from July 1, 1977, to date of reinstatement.

Respectfully submitted,

JIMMIE ALEXANDER
in Pro Per

APPENDIX "A"

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

JIMMIE ALEXANDER,
Petitioner and Appellant,

v.

LOS ANGELES COUNTY CIVIL SERVICE COMMISSION; OF LOS ANGELES, a legal subdivision of the State of California; HARRY HUFFORD, as Chief Administrative Officer, Director and Assessor of County of Los Angeles; MARY BLOODGOOD, as Auditor-Controller of the County of Los Angeles; H.B. ALVORD, as Treasurer of the County of Los Angeles,
Respondents.

2 CIVIL NO. 56626
(Super. Ct. No. C251961)

COURT OF APPEAL
DEC 4 - 1979
CLAY

Jimmie Alexander appeals the superior court's refusal to order the Los Angeles County Civil Service Commission (Commission) to reinstate him as a county employee. The issue is whether the Commission properly denied Alexander's request for a hearing into his implied resignation from county service.

Alexander, a county employee since 1961, last held the position of appraiser in the Office of County Assessor. On the morning of 5 July 1977, Alexander informed the assessor's office that he would be absent from work that day because of a stomach illness. **Thereafter, Alexander never** returned to work and never **requested** further **authorization for his absence.** On July 15 the personnel officer for the assessor's office sent a letter to Alexander seeking verification that his absence since July 6 was due to continued illness, and requesting the anticipated date of his return to work. Alexander did not respond. On August 17 the personnel officer sent a second letter advising Alexander that if he did not submit to the assessor's office by August 23 a doctor's statement about the nature of his illness and the date of his anticipated return to work, he would thereafter be considered absent without pay. Having received no response to its inquiries, on August 25 the personnel officer sent a third letter informing Alexander that he was considered absent without pay as of August 24, and again instructing Alexander to submit to the assessor's office a doctor's statement about the nature of his illness and the anticipated date of his return to work. Alexander again failed to respond, and on August 30 the personnel officer sent a fourth letter warning Alexander that if the assessor's office did not receive medical verification of his illness by September 6 he would be deemed impliedly resigned his position under section 33 of the Los Angeles County Administrative Code as absent without authorization.

Section 33 states that an employee is deemed to have impliedly resigned his position with the county if he is absent without prior authorization for a period of three consecutive working days. The statute further provides that the employee may be reinstated within 20 days of the effective date of his implied resignation, and if the department finds that there is good cause for reasons beyond the employee's control which excuse his absence without prior authorization. If after a timely request, the department refuses to reinstate the employee, or if the employee alleges fraud, duress, or undue influence by the appointing officer of his department or by the county in circumstances causing his implied resignation, the employee may then petition to substantiate a claim of either (1) fraud, duress, or undue influence, or (2) good cause for reasons beyond his control excusing his absence without authorization (Los Angeles Civil Service Commission, rule 19.13.)

On September 6 still having received no response from Alexander, the assessor's office notified Alexander that he had been deemed to have impliedly resigned his position and advised that if he wished to be reinstated he would have to submit a written statement within 20 days to the office's Director of Real Property Appraisals, detailing specific circumstances of his absence and the reason for his failure to respond to any of the office's letters.

On September 14 Alexander sent a letter to the Office

of County Counsel requesting that it order the assessor's office to reinstate him. The County Counsel's Office replied that Alexander should request reinstatement from the assessor's office itself on or before September 26. However, rather than request reinstatement from the assessor's office as he was directed to do, on October 2 Alexander requested the Commission to order the assessor's office to reinstate him. On October 31 Alexander's attorney asked the Commission to grant his client a hearing on the issue of his implied resignation. On **December 21 the request was withdrawn without prejudice in order to permit Alexander, who still had never contacted the assessor's office, to request reinstatement from that office.** Finally, on December 27 Alexander wrote to the assessor's office Director of Real Property Appraisals and requested reinstatement. But Alexander failed to include in his request for reinstatement any explanation for his failure to obtain authorized absence, to respond to the office's inquiries, or to submit a timely request for reinstatement. On January 16 the Director sent a letter to Alexander requesting an explanation. On January 22 Alexander's attorney informed the assessor's office that he was advising his client not to provide the requested explanation, and demanded either rejection or approval of the request for reinstatement. On January 31 the assessor's office rejected the request for reinstatement. Alexander then renewed his request for a hearing before the Commission. On June 21, after reviewing the materials submitted, the Commission denied the request.

On August 1978, Alexander petitioned the superior court for mandate to compel the Commission to conduct a hearing into his implied resignation. On 7 December 1978, the court found that the Commission acted within its discretion in refusing Alexander's request for a hearing, and it denied the petition for mandate.

On appeal, Alexander asserts he was entitled to a hearing as a matter of due process, and cites **Skelly v. State Personnel Board** (1975) 15 Cal. 3d 194, in support of his contention. In **Skelly** the Supreme Court held that because a permanent state employee has a property interest in the continuation of his employment, he is entitled to the benefit of certain procedural safeguards (not necessarily including a full evidentiary hearing) prior to his disciplinary removal. But Alexander was not discharged. Alexander impliedly resigned his position and in doing so abandoned his right to continued employment. (See **Baker v. Wadsworth** (1970) 6 Cal. App. 3d 253, 262-263.) The procedural safeguards recognized in **Skelly** are therefore not applicable, and the only issue is whether the Commission acted within its discretion in denying his petition for a hearing. For two months Alexander failed to report to work, failed to request authorization for his absence, and failed to respond to his employer's inquiries. He then neglected to make a timely request for reinstatement and when given an extended opportunity to do so, refused to provide any explanation for his conduct. His petition for hearing did not state any facts that would substantiate a claim that there was good cause for reasons

beyond his control which would excuse his unauthorized absence. We agree with the trial court that the commission acted within its discretion in denying Alexander's request for a hearing.

The judgment is affirmed.

NOT FOR PUBLICATION.

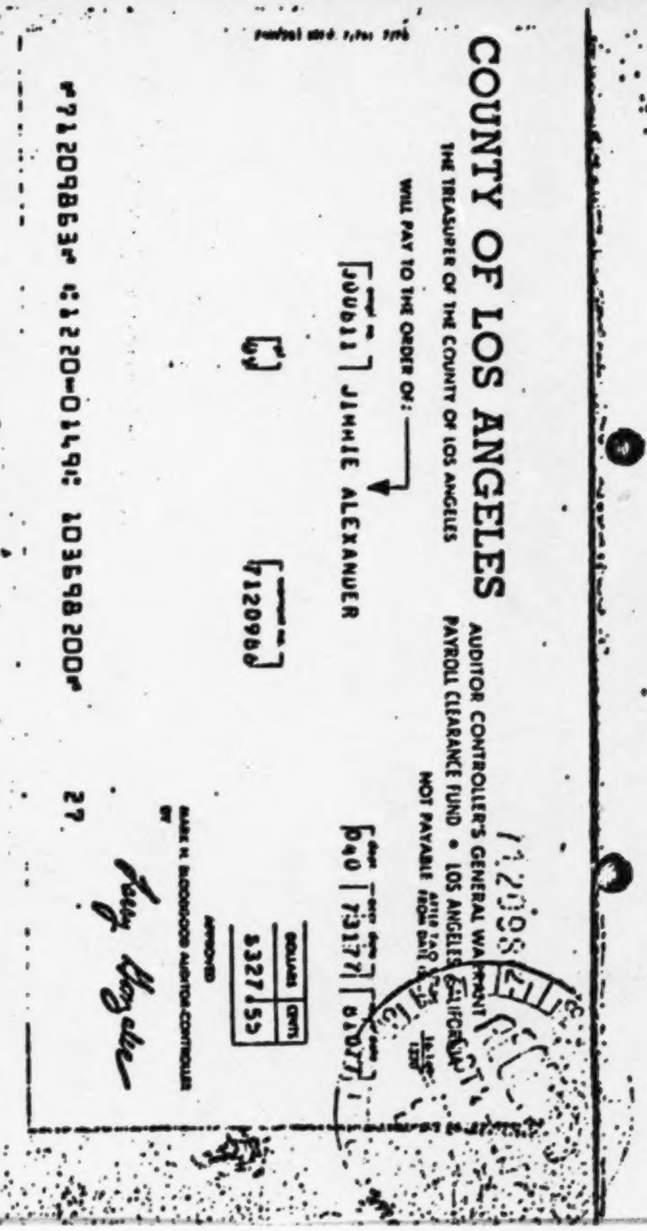
(S) FLEMING, J.

We concur:

(S) ROTH, P.J.

(S) BEACH, J.

APPENDIX "B"



COUNTY OF LOS ANGELES

THE TREASURER OF THE COUNTY OF LOS ANGELES

WILL PAY TO THE ORDER OF:

AUDITOR CONTROLLER'S GENERAL WARRANT

PAYROLL CLEARANCE FUND • LOS ANGELES, CALIFORNIA

NOT PAYABLE AFTER TWO YEARS FROM DATE ISSUED 16-149/1220

712098

J00611 JIMMIE ALEXANDER

040 | 73177 | 81077

7120986

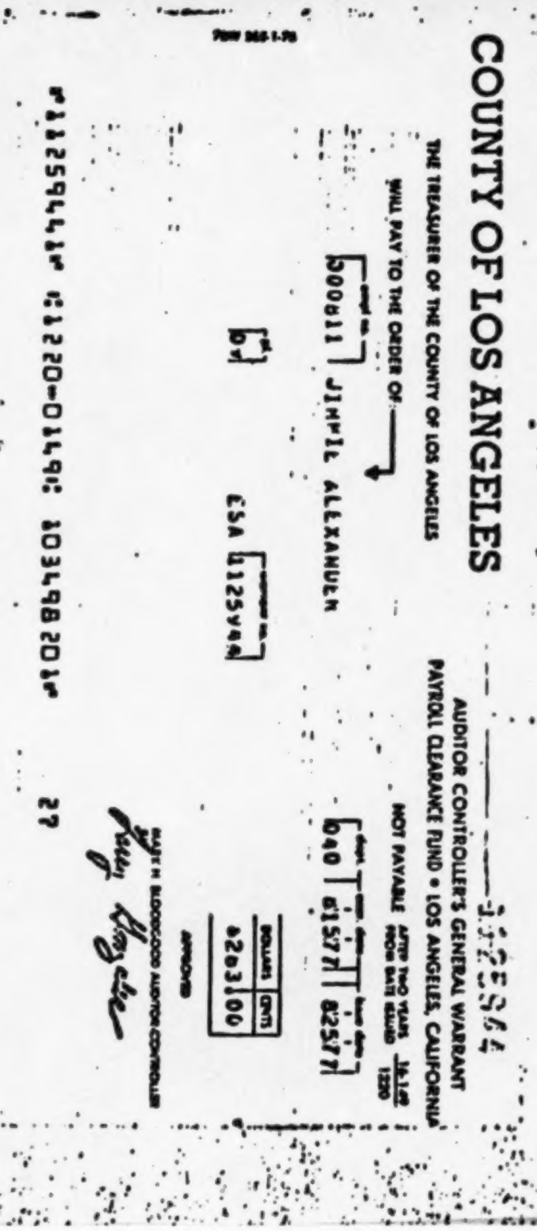
DOLLARS	CENTS
$327	55

APPROVED

MARK H. BLOODGOOD AUDITOR-CONTROLLER

BY Larry Gonzalez

⑈71209863⑈ ⑆1220-0149⑆ 103698200⑈ 27



COUNTY OF LOS ANGELES

THE TREASURER OF THE COUNTY OF LOS ANGELES

WILL PAY TO THE ORDER OF:

AUDITOR CONTROLLER'S GENERAL WARRANT

PAYROLL CLEARANCE FUND • LOS ANGELES, CALIFORNIA

NOT PAYABLE AFTER TWO YEARS FROM DATE ISSUED 16-149/1220

1125944

000611 JIMMIE ALEXANDER

040 | 81577 | 82577

ESA 1125944

DOLLARS	CENTS
$263	00

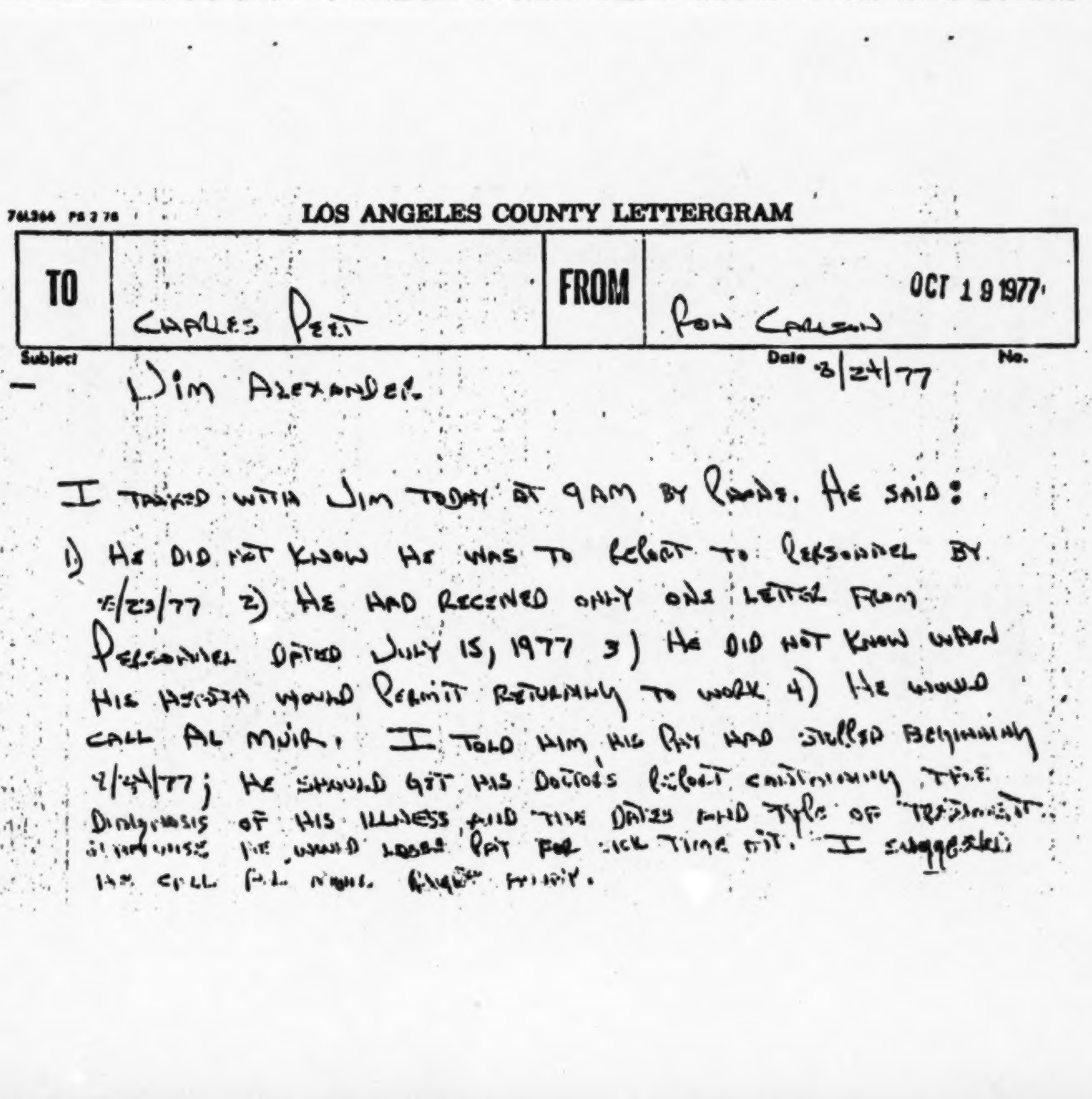
APPROVED

MARK H. BLOODGOOD AUDITOR-CONTROLLER

Larry Gonzalez

⑈11259441⑈ ⑆1220-0149⑆ 103498201⑈ 27

APPENDIX "C"



761366 PS 2 76

LOS ANGELES COUNTY LETTERGRAM

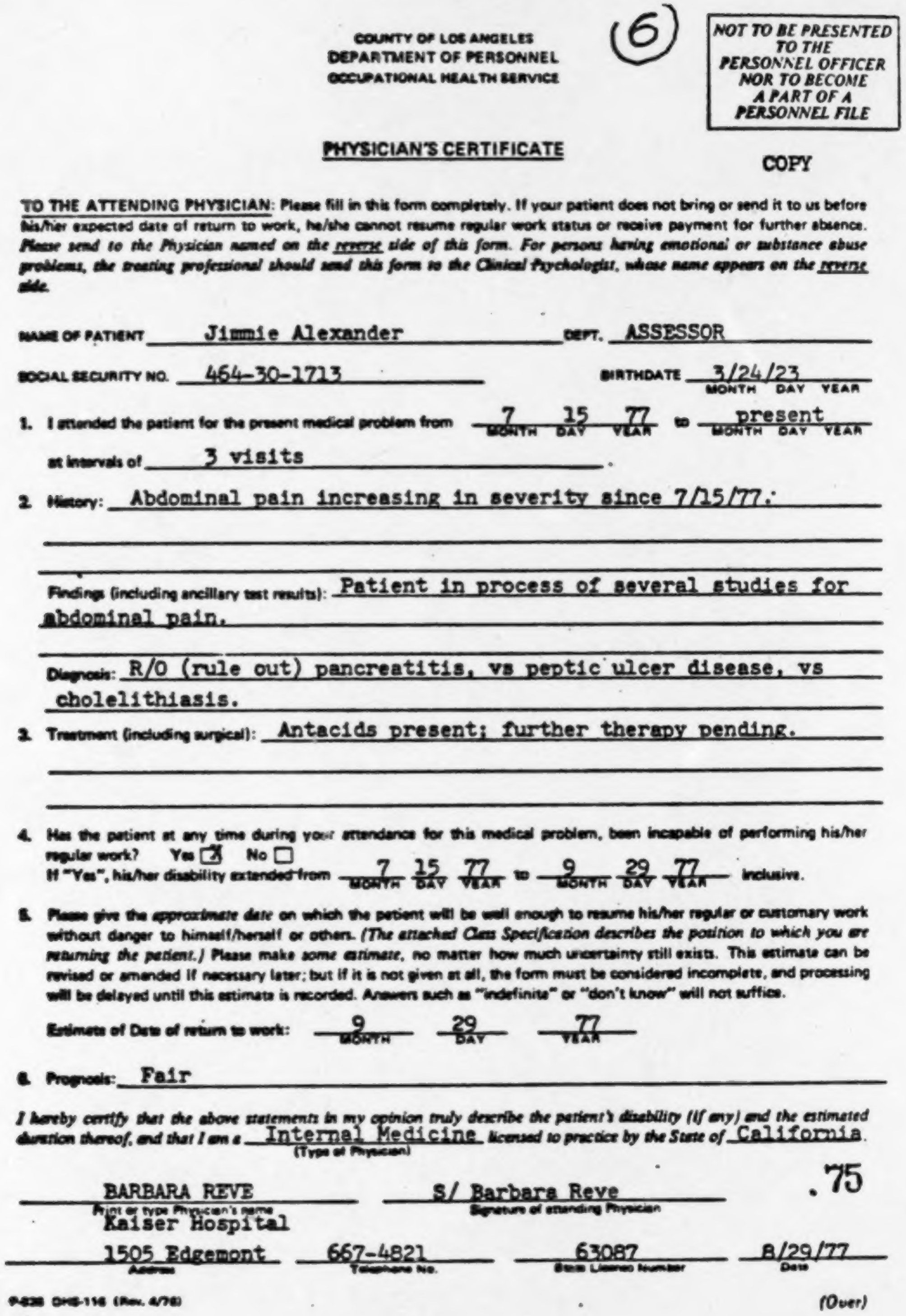
TO		FROM	OCT 19 1977
	CHARLES PETT		RON CARLSON

Subject — JIM ALEXANDER   Date 8/24/77   No.

I TALKED WITH JIM TODAY AT 9AM BY PHONE. HE SAID:

1) HE DID NOT KNOW HE WAS TO REPORT TO PERSONNEL BY 8/23/77 2) HE HAD RECEIVED ONLY ONE LETTER FROM PERSONNEL DATED JULY 15, 1977 3) HE DID NOT KNOW WHEN HIS HEALTH WOULD PERMIT RETURNING TO WORK 4) HE WOULD CALL AL MUIR. I TOLD HIM HIS PAY HAD STOPPED BEGINNING 8/24/77; HE SHOULD GET HIS DOCTOR'S REPORT CONTAINING THE DIAGNOSIS OF HIS ILLNESS AND THE DATES AND TYPE OF TREATMENT. OTHERWISE HE WOULD LOSE PAY FOR SICK TIME ETC. I SUGGESTED HE CALL AL MUIR AGAIN TODAY.

APPENDIX "D"



COUNTY OF LOS ANGELES
DEPARTMENT OF PERSONNEL
OCCUPATIONAL HEALTH SERVICE

(6)

NOT TO BE PRESENTED TO THE PERSONNEL OFFICER NOR TO BECOME A PART OF A PERSONNEL FILE

PHYSICIAN'S CERTIFICATE

COPY

TO THE ATTENDING PHYSICIAN: Please fill in this form completely. If your patient does not bring or send it to us before his/her expected date of return to work, he/she cannot resume regular work status or receive payment for further absence. *Please send to the Physician named on the reverse side of this form. For persons having emotional or substance abuse problems, the treating professional should send this form to the Clinical Psychologist, whose name appears on the reverse side.*

NAME OF PATIENT Jimmie Alexander DEPT. ASSESSOR

SOCIAL SECURITY NO. 464-30-1713 BIRTHDATE 3/24/23 (MONTH DAY YEAR)

1. I attended the patient for the present medical problem from 7 (MONTH) 15 (DAY) 77 (YEAR) to present (MONTH DAY YEAR)
at intervals of 3 visits.

2. History: Abdominal pain increasing in severity since 7/15/77.

Findings (including ancillary test results): Patient in process of several studies for abdominal pain.

Diagnosis: R/O (rule out) pancreatitis, vs peptic ulcer disease, vs cholelithiasis.

3. Treatment (including surgical): Antacids present; further therapy pending.

4. Has the patient at any time during your attendance for this medical problem, been incapable of performing his/her regular work? Yes ☒ No ☐
If "Yes", his/her disability extended from 7 (MONTH) 15 (DAY) 77 (YEAR) to 9 (MONTH) 29 (DAY) 77 (YEAR) inclusive.

5. Please give the *approximate date* on which the patient will be well enough to resume his/her regular or customary work without danger to himself/herself or others. *(The attached Class Specification describes the position to which you are returning the patient.)* Please make *some estimate*, no matter how much uncertainty still exists. This estimate can be revised or amended if necessary later; but if it is not given at all, the form must be considered incomplete, and processing will be delayed until this estimate is recorded. Answers such as "indefinite" or "don't know" will not suffice.

Estimate of Date of return to work: 9 (MONTH) 29 (DAY) 77 (YEAR)

6. Prognosis: Fair

I hereby certify that the above statements in my opinion truly describe the patient's disability (if any) and the estimated duration thereof, and that I am a Internal Medicine (Type of Physician) *licensed to practice by the State of* California.

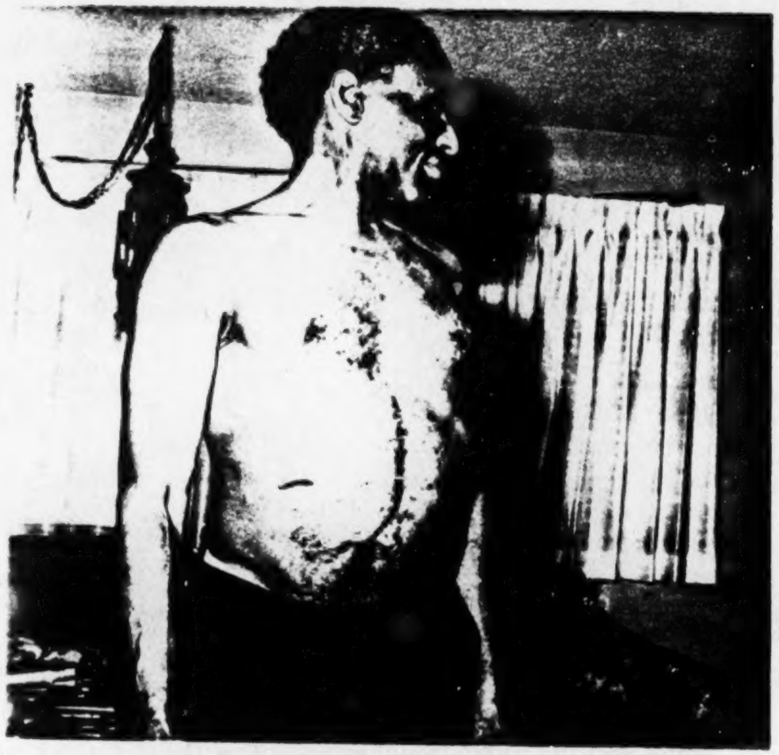
.75

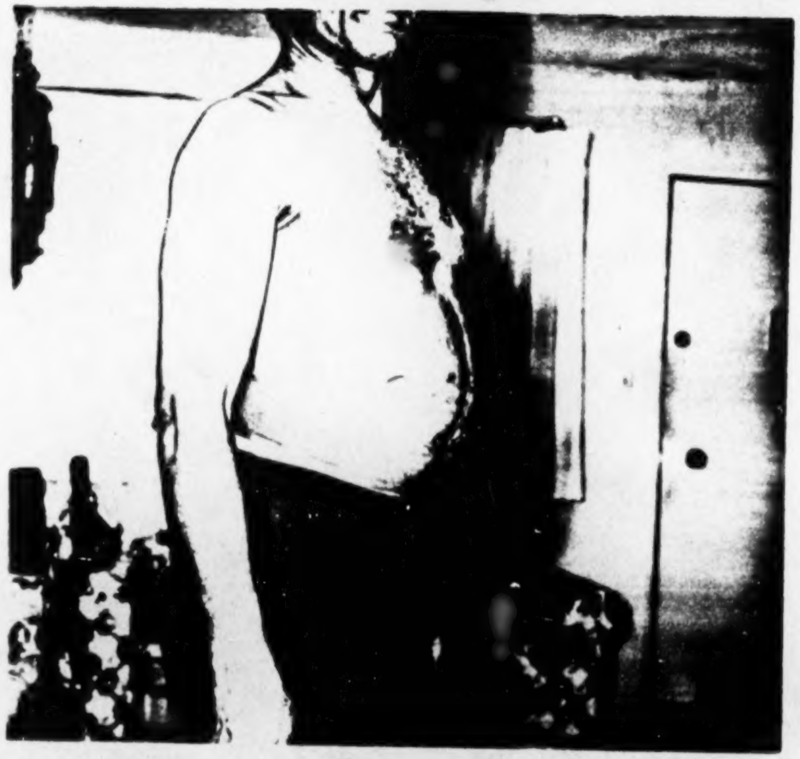
BARBARA REVE (Print or type Physician's name)
S/ Barbara Reve (Signature of attending Physician)
Kaiser Hospital
1505 Edgemont (Address)
667-4821 (Telephone No.)
63087 (State License Number)
8/29/77 (Date)

P-838 OHS-116 (Rev. 4/76)

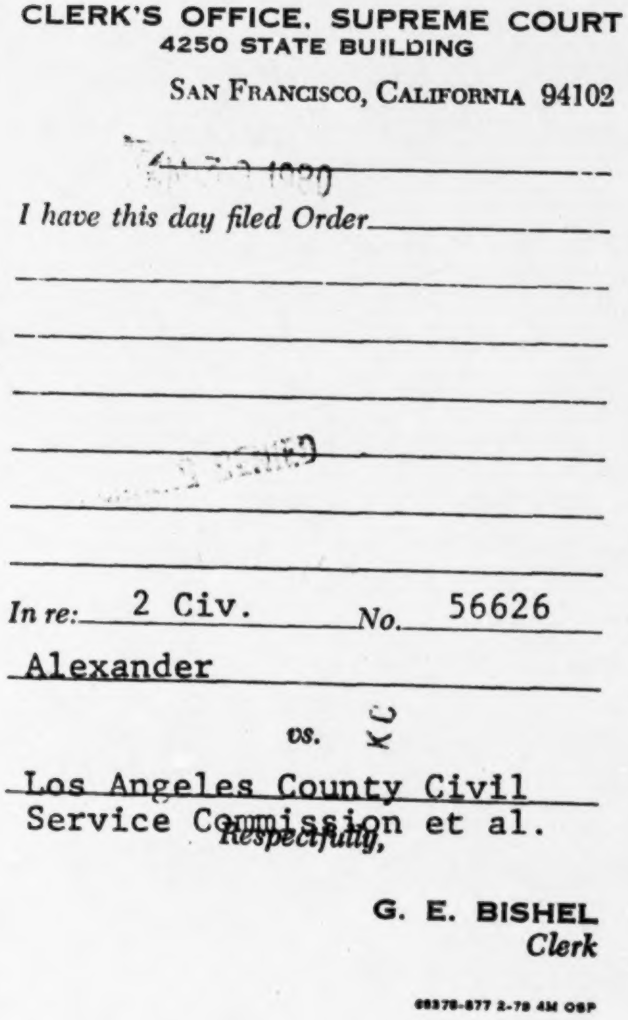
(Over)

APPENDIX "E"





APPENDIX "F"



CLERK'S OFFICE. SUPREME COURT
4250 STATE BUILDING
SAN FRANCISCO, CALIFORNIA 94102

[illegible]

I have this day filed Order

[illegible]

In re: 2 Civ. *No.* 56626

Alexander

vs. KC

Los Angeles County Civil
Service Commission et al.

Respectfully,

G. E. BISHEL
Clerk

69378-877 2-78 4M OSP

PROOF OF SERVICE

STATE OF CALIFORNIA)
ss
County of Riverside)

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 612 N. Bush Street, Santa Ana, California 92701.

On April 28, 1980, I served the within PETITION FOR WRIT OF CERTIORARI on the interested parties in said action, by placing a true copy in sealed envelopes, with postage thereon fully prepaid, in the United States mail at Santa Ana, California, addressed as follows:

Clerk of Superior Court
County of Los Angeles
111 N. Hill St.
Los Angeles, California
90012

John Larson,
County Counsel
648 Hall of Administration
Los Angeles California
90012

Clerk, Court of Appeal
2nd Appellant District
3580 Wilshire Blvd.,
Room 301
Los Angeles, CA 90010

California Supreme Court
3580 Wilshire Blvd.,
Room 213
Los Angeles, California
90010

I certify under penalty of perjury that the foregoing is true and correct.

Executed on April 28, 1980, at Santa Ana, California.

JACK GALLAGHER

Supreme Court, U.
FILED
MAY 23 1980
CHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, .9)

No. 79-1714

JIMMIE ALEXANDER,

Petitioner and Appellant,

vs.

LOS ANGELES COUNTY CIVIL SERVICE COMMISSION, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEAL, STATE OF CALIFORNIA,
SECOND APPELLATE DISTRICT

BRIEF FOR RESPONDENTS IN OPPOSITION

JOHN H. LARSON
County Counsel

WILLIAM F. STEWART, Chief
Labor Relations Division

JOE BEN HUDGENS, Principal
Deputy County Counsel

648 Hall of Administration
Los Angeles, California 90012
(213) 974-1850

Attorneys for Respondents

IN THE
SUPREME COURT
OF THE UNITED STATES

October Term, 1979
No. ______

JIMMIE ALEXANDER,

Petitioner and Appellant,

vs.

LOS ANGELES COUNTY CIVIL SERVICE COMMISSION, et al.,

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**ON PETITION FOR A WRIT OF CERTIORARI
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648 Hall of Administration
Los Angeles, California 90012
(213) 974-1850

Attorneys for Respondents

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IN THE
SUPREME COURT
OF THE UNITED STATES
October Term, 1979
No. ________

JIMMIE ALEXANDER,

Petitioner and Appellant,

vs.

LOS ANGELES COUNTY CIVIL SERVICE
COMMISSION, et al.,

Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION

JURISDICTION

As appellant challenges the constitutionality of a civil service rule of the County of Los Angeles, California, and claims that the rule violates his constitutional right to retain his County civil service employment, his petition for a writ of certiorari meets the literal requirements of paragraph (3) of Section 1257 of Title 28 of the United States Code. Respondent will attempt to demonstrate, however, that the questions presented -- especially in view of the facts of the case -- are not of such substance or importance as to merit the granting of a discretionary hearing by this Honorable Court.

QUESTIONS PRESENTED

1. Is Section 33 of the Los Angeles County Administrative Code (County Ordinance No. 4099) unconstitutional, either generally or as applied to appellant?

2. Is there evidence that appellant was a victim of racial discrimination?

3. Has appellant been subjected to cruel or unusual punishment?

ORDINANCE INVOLVED

Section 33 of the Los Angeles County Administrative Code reads in full as follows:

> "A county officer or employee resigns in any of the following ways:
>
> "(a) A county officer or employee who without prior authorization is absent or fails to discharge his regularly assigned duties for either three (3) consecutive regular working days or for two (2) consecutive regularly scheduled on-duty shifts, whichever

may be applicable, shall be deemed to have resigned effective as of the end of the day on which he last performed any of the duties of his position; provided, however, an officer or employee shall not be deemed to have so resigned if he resumes the performance of his regularly assigned duties at the commencement of his next regular working day or on-duty shift following the expiration of the aforementioned period of absence or failure to discharge duties.

"Within twenty (20) calendar days after the effective date of such resignation, any officer or employee who has resigned pursuant to this subsection (a) may file with his appointing officer a written request for reinstatement. The appointing officer may reinstate such officer or employee if such appointing officer finds that there is good cause for the absence or failure to perform duties such as bona fide illness, injury, or similar circumstances beyond the control of the officer or employee, and that such officer or employee is ready and able to resume the discharge of his duties. In the event an individual is so reinstated, such reinstatement shall constitute a retroactive leave of absence.

"This subsection (a) does not apply to an elective officer or department head.

"(b) An elective officer or officer appointed by the Board may resign by resignation in writing to the Board and filed with the Executive Officer-Clerk thereof. Such resignation shall be effective on the date designated therein.

"(c) Any other officer or employee may resign by tendering his resignation in writing to his appointing officer. Such resignation shall be effective on the date designated therein, and if no date is so designated it shall be effective immediately."

STATEMENT OF THE CASE

Appellant was employed in the office of the Los Angeles County Assessor as an Appraiser II. On July 5, 1977, he notified his regional office by telephone that he would not be able to come to work that day because of a stomach illness. After that date, he did not again report to work or contact his employer to request further authorized absence.

On July 15, 1977, the personnel officer of the Assessor's office wrote to appellant, seeking to verify that his continued absence from duty was due to illness; to ascertain the date on which he might return to work; and to inform him of the need, upon his return to duty, to present a medical clearance from the Occupational Health Service of the County's Department of Personnel.

Appellant admits receiving that letter, but he did not respond to it.

More than one month later, on August 17, 1977, the personnel officer, by certified mail, notified appellant that he would be deemed absent without leave on and after August 23, 1977, if he did not, by then, furnish the Assessor's office with a statement from his physician as to the nature of his illness and the date of his expected return to work. The letter also asked that a copy of that statement be sent to the Occupational Health Service for purposes of medical reevaluation in accordance with a County ordinance. Appellant denies receiving that letter.

Not having heard from appellant by August 25, 1977, the Assessor's personnel officer again wrote to him, this time by regular, as well as certified mail. The August 25 letter notified appellant that he was deemed absent without leave, and reiterated the previous request for a physician's statement in duplicate. Copies of prior correspondence were attached. Appellant does not deny those letters.

On August 30, 1977, the personnel officer again wrote to appellant, by both regular and certified mail, that if he did not submit a physician's statement by September 6, 1977, he would be deemed, under Section 33 of the Los Angeles County Administrative Code, to have impliedly resigned his employment. Copies of previous letters were again attached. Appellant must have received that correspondence, because he appears to have filed a physician's statement in early September with the Occupational Health Service, though not with the Assessor's office.

On September 6, 1977, still not having heard from appellant for the past two months, the personnel officer notified him by regular and certified mail, that he was deemed to have impliedly resigned; and that, in order to be reinstated as an employee of the Assessor, he would have to show good cause, within twenty days, for his unauthorized absence. Appellant apparently received that letter, but made no timely request to the Assessor's office for reinstatement.

After writing to both the County Counsel and respondent, requesting that each of them compel the Assessor to reinstate him as an employee, appellant finally, on October 31, 1977, requested a hearing before respondent on his implied resignation. At respondent's suggestion, he withdrew the request without prejudice, on December 21, 1977, to request reinstatement from the Assessor's office. He wrote to the Director of Real Property Appraisals asking to be reinstated, but offering no explanation for his unauthorized absence, his failure to answer correspondence or his late reinstatement request. When the Director of Real Property Appraisals wrote back questioning these matters, appellant, through his attorney, responded refusing to provide any explanation and demanding that his request either be accepted or refused. It was refused on January 31, 1978.

On June 21, 1978, respondent denied appellant's request for a hearing.

The foregoing were the facts found by the California Superior Court in denying appellant's petition for a writ of mandamus on December 7, 1978.

The California Court of Appeal affirmed that decision on December 4, 1979; and the California Supreme Court denied appellant's petition for hearing on January 30, 1980.

ARGUMENT: REASONS FOR DENYING THE WRIT

Aside from appellant's own bare assertion, there is no evidence in the record to support his charge of racial discrimination.

Because this is a civil action, the constitutional prohibition of cruel and unusual punishment does not apply.

Appellant's remaining arguments attack the constitutionality of Section 33 of the Los Angeles County Administrative Code (quoted above) both generally and as applied to himself. The two grounds of challenge are that the ordinance section allows permanent County employees' jobs to be terminated without cause, and that it denies them a hearing.

Respondent submits that just cause for termination of employment is specified in the section, itself -- i.e., unauthorized absence or failure to perform duties for three consecutive days or two consecutive, regularly-scheduled work shifts. In appellant's case, the period of absence stretched to two months. No federal constitutional or statutory provision mandates that a government retain on its payroll employees who will not work or who have abandoned their jobs. If illness prevents them from working, it is only reasonable to expect them to communicate that information to their employer, as appellant was repeatedly urged to do.

As far as the right to a hearing is concerned, Section 33 also establishes a procedure for reinstatement within twenty days for good cause. Appellant, who refused to exhaust that procedure, fails to explain how any earlier "hearing" can be held when an employee is absent, incommunicado or both.

CONCLUSION

Because appellant's contentions are so utterly devoid of substance, they furnish no basis for granting his petition. Therefore, the writ sought should be denied.

Respectfully submitted,

JOHN H. LARSON
County Counsel

WILLIAM F. STEWART, Chief
Labor Relations Division

JOE BEN HUDGENS, Principal
Deputy County Counsel

Attorneys for Respondent